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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Jose Juan Rivera Alatorre,

Plaintiff,

v.

Martin O'Malley¹, Commissioner of
Social Security,

Defendant.

Case No. 1:23-cv-01686-SKO

**STIPULATION AND UNOPPOSED
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES PURSUANT TO THE
EQUAL ACCESS TO JUSTICE ACT;
ORDER**

(Doc. 24)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of SEVEN THOUSAND ONE HUNDRED AND SIXTY-TWO DOLLARS AND 01/100 (\$7,162.01) under the Equal Access to

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars
2 (\$0.00) under 28 U.S.C. §1920. This amount represents compensation for all legal
3 services rendered on behalf of Plaintiff by counsel in connection with this civil action,
4 in accordance with 28 U.S.C. §§ 1920, 2412(d).

5 Plaintiff was the prevailing party in this matter and Plaintiff is an individual
6 whose net worth does not exceed \$2,000,000 at the time the civil action was filed. The
7 position of the Commissioner was not substantially justified and an award of fees is not
8 unjust.

9 After the Court issues an order for EAJA fees to Plaintiff, the government will
10 consider the matter of Plaintiff's assignment of EAJA fees to Plaintiff's attorney.
11 Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this
12 Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program
13 (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to
14 Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order,
15 the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to
16 his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset
17 under the Treasury Offset Program, and (3) agrees to waive the requirements of the
18 Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney.
19 However, if there is a debt owed under the Treasury Offset Program, the Commissioner
20 cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining
21 EAJA fees after offset will be paid by a check or electronic fund transfer (EFT) made
22 out to Plaintiff, but delivered to Plaintiff's attorney.

24 This stipulation constitutes a compromise settlement of Plaintiff's request for
25 EAJA attorney fees, and does not constitute an admission of liability on the part of
26 Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute
27 a complete release from, and bar to, any and all claims that Plaintiff and/or Counsel
28

1 including Counsel's firm may have relating to EAJA attorney fees in connection with
2 this action.

3 The parties further agree that the EAJA award is without prejudice to the right of
4 Plaintiff's attorney to seek attorney fees pursuant to Social Security Act § 206(b), 42
5 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. §
6 2412(c)(1) (2006).

7 Respectfully submitted,

8
9 Dated: October 17, 2024

/s/ Jonathan O. Peña

10 JONATHAN O. PEÑA

11 Attorney for Plaintiff

12 Dated: October 17, 2024

13 PHILLIP A. TALBERT

14 United States Attorney

15 MATHEW W. PILE

16 Associate General Counsel

Office of Program Litigation

Social Security Administration

17 By: * Michael J. Mullen

18 Michael J. Mullen

19 Special Assistant U.S. Attorney

Attorneys for Defendant

20 (*Permission to use electronic signature
21 obtained via email on October 17, 2024).
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ORDER

Based upon the parties' Stipulation and Unopposed Motion for the Award and Payment of Equal Access to Justice Act Fees and Expenses (the "Stipulation") (Doc. 24),

IT IS ORDERED that fees and expenses in the amount of SEVEN THOUSAND ONE HUNDRED AND SIXTY-TWO DOLLARS AND 01/100 (\$7,162.01) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920, be awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: **October 18, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE